

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

The State of Texas, et al.,

Plaintiffs,

v.

Google LLC,

Defendant.

Case No. 4:20-cv-00957-SDJ

Hon. Sean D. Jordan

**PLAINTIFF STATES' NOTICE OF SUPPLEMENTAL AUTHORITY REGARDING THE
RIGHT TO A TRIAL BY JURY**

On April 17, 2025, the Fifth Circuit vacated a civil penalty order against AT&T, holding that AT&T was entitled to a jury. *See AT&T, Inc. v. F.C.C.*, No. 24-60223, 2025 WL 1135280, at *10 (5th Cir. Apr. 17, 2025). Its reasoning reinforces Plaintiff States' arguments in opposition to Google's pending motion to strike Plaintiff States' jury demand, Dkt. 690.

First, “civil penalties ‘are the prototypical common law remedy’” that are “designed to ‘punish or deter’ violators,” rather than “to ‘restore the status quo’” by “compensat[ing] victims.” *Id.* at *4–5 (quoting *S.E.C. v. Jarkesy*, 603 U.S. 109, 123 (2024)). As Plaintiff States previously explained, the civil penalties remedy is “all but dispositive” in demonstrating a right to a jury trial. *See* Dkt. 753 at 4 (quoting *Jarkesy*, 603 U.S. at 123); *see also* Dkt. 834 at 5–6 (summarizing the analysis for each Plaintiff State and showing that all Plaintiff States are seeking civil penalties).

Second, the cause of action need not be “identical” to a common law cause of action. *AT&T*, 2025 WL 1135280, at *6. Rather, the “key inquiry,” is “whether the statute ‘target[s] the same basic conduct’ as the common law claim.” *Id.* at *12 (alteration in original) (quoting *Jarkesy*, 603 U.S. at 125). There, it was enough that “section 222 action targets a carrier’s negligence in handling customer data” because it required the carrier to act reasonably. *Id.* Here, Plaintiff States’

antitrust claims were actionable at common law, *see* Dkt. 753 at 9; Dkt. 834 at 5–6, and their DTPA claims are more closely analogous to legal claims than to equitable claims, *see* Dkt. 753 at 4–5; Dkt. 834 at 5–6. If acting reasonably with respect to customer data is close enough to negligence, then regulating deceptive, misleading, or unconscionable conduct is clearly close enough.

Third, the Fifth Circuit easily rejected the FCC’s argument that the government is different: “Nor does it matter that this action is brought by the Government. The Supreme Court ‘ha[s] never held that “the presence of the United States as a proper party to the proceeding is . . . sufficient” by itself to trigger the [public rights] exception.’” *AT&T*, 2025 WL 1135280, at *7 n.11 (alterations and omission in original) (quoting *Jarkesy*, 603 U.S. at 135). “Ultimately, ‘what matters’ . . . ‘is the substance of the suit, not . . . who brings it’” *Id.* at *9 (quoting *Jarkesy*, 603 U.S. at 135). Likewise, it does not matter for Seventh Amendment analysis that it is the Plaintiff States, rather than private individuals, who are pursuing these claims—what matters is that these legal claims for civil penalties are for the jury to decide. *See* Dkt. 753 at 9–10.

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CERTIFICATE OF SERVICE

I certify that on May 15, 2025, this document was filed electronically in compliance with Local Rule CV-5(a) and served on all counsel who have consented to electronic service, per Local Rule CV-5(a)(3)(A).

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